

**E. Bell Atlantic and Its Affiliates Will Comply with the Joint Marketing Provisions of Section 272(g).**

Bell Atlantic's 272 Affiliates will not market or sell local exchange service provided by Bell Atlantic except to the extent that Bell Atlantic permits non-affiliated long distance carriers to do the same. See 47 U.S.C. § 272(g)(1); Browning Decl. ¶ 21; Breen Decl. ¶ 15. Of course, neither Bell Atlantic nor its 272 Affiliates will market or sell interLATA service originating in an in-region State unless and until Bell Atlantic has received authorization to provide such service in that State. See 47 U.S.C. § 272(g)(2); Browning Decl. ¶ 21; Breen Decl. ¶ 15.

**F. Bell Atlantic's Compliance Plan Will Ensure Satisfaction of Its Obligations Under Section 272.**

To ensure that the requirements set forth in section 272 and the Commission's regulations are strictly observed, Bell Atlantic and its 272 affiliates have established internal control mechanisms to prevent, as well as to detect and discontinue, any inappropriate practices. See Browning Decl. ¶¶ 30-34; Breen Decl. ¶¶ 18-24; Verge Decl. ¶¶ 20-26. For example, the process starts with the extensive training provided to all relevant employees to ensure that they fully understand their obligations under section 272. See Browning Decl. ¶ 33b; Breen Decl. ¶ 24; Verge Decl. ¶ 26. In addition, a corporate-wide Affiliate Interest Compliance Office initiates reviews of affiliate transactions and, where necessary, manages and directs the development of policies, practices, methods, and procedures to help ensure compliance. See Browning Decl. ¶ 32b. Likewise, a corporate-wide Ethics and Corporate Compliance Program is in place, as is an Office of Ethics and Corporate Compliance charged with implementing this program. See id. ¶ 32f-j. To help ensure that problems do not go unreported, a toll-free "Compliance Hotline" enables employees anonymously to report suspected violations of any law or regulation, including violations of section 272 and related regulations. See id. ¶ 32h. Failure

to comply with corporate compliance requirements, including section 272 compliance, is subject to disciplinary action, up to and including dismissal. See id. ¶¶ 33d, 34c-e.

#### **IV. APPROVING BELL ATLANTIC'S APPLICATION IS IN THE PUBLIC INTEREST.**

The evidence is overwhelming that Bell Atlantic's entry into long distance in New York is in the public interest. First, as the above discussion abundantly shows, the local market in New York unquestionably is open, and local competition (particularly facilities-based local competition) is thriving. Granting Bell Atlantic's application will prompt further local competition. Indeed, the long distance carriers already have started to ramp up their own mass-marketing efforts in anticipation of Bell Atlantic's entry.

Second, mechanisms are in place to ensure that the local market will remain open. The New York PSC, long recognized as one of the most pro-competitive state regulatory commissions, has supervised more than a year of third-party testing of Bell Atlantic's wholesale procedures. It has set TELRIC rates for unbundled network elements. It has overseen the development of extensive performance-monitoring standards and reporting requirements. And it has guided the development of a comprehensive performance assurance plan that requires Bell Atlantic to put at risk no less than \$269 million of refunds each year. With these mechanisms in place, "backsliding" will not occur.

Finally, Bell Atlantic's entry will greatly enhance long distance competition. Although long distance carriers have trumpeted superficially attractive pricing plans, the vast majority of residential users (especially low-volume users) are being left behind. Bell Atlantic's entry will introduce a strong new competitor that is ready, willing, and able to serve all long distance users. Bell Atlantic's entry may increase consumer welfare by as much as \$1.1 billion per year. And

there is no downside here: years of experience with Bell company entry into other adjacent markets has put the lie to shopworn claims of access discrimination and cross-subsidization.

**A. Local Competition in New York Is Thriving.**

This Commission has stated in prior applications that it will look to the state of local competition as one factor in determining whether allowing entry into long distance is in the public interest. See Michigan Order ¶¶ 386-391.<sup>46</sup> This application meets the public-interest standard by that or any other measure. Local markets in New York are unquestionably and irreversibly open.

*First, competitors are entering the local market in New York using all three entry paths provided under the Act, and facilities-based competition is particularly well-established. See Taylor Decl. Att. A ¶¶ 1, 27; supra, pp. 4-5. This is precisely the set of circumstances contemplated by the Department of Justice when it advised: “If actual, broad-based entry through each of the entry paths contemplated by Congress is occurring in a state, this will provide invaluable evidence supporting a strong presumption that the BOC’s markets have been opened.” DOJ Oklahoma Evaluation at 43.*

---

<sup>46</sup>Bell Atlantic disagrees with that approach as a legal matter. Under the terms of the Act, the public-interest inquiry should focus on the market to be entered: the long distance market. The statute requires that “the requested authorization” be consistent with the public interest. 47 U.S.C. § 271(d)(3)(C). The “requested authorization” is to provide in-region interLATA services. See id. § 271(b)(1). Therefore, the statute’s public-interest focus is clearly on the long distance market, not the local market. This reading finds strong support in section 271(c)(2)(B), which sets forth an intricate competitive checklist, and section 271(d)(4), which states that “[t]he Commission may not . . . extend the terms used in the competitive checklist.” It is simply implausible that Congress would have spent countless hours honing the checklist, would further have enjoined the Commission from improving or expanding upon it, but somehow would also have authorized the Commission to add local-competition enhancing requirements in the context of its public-interest review.

*Second, the fact that this entry is so heavily facilities-based provides perhaps the best possible indicator of the openness of the local market.* Investment in telecommunications facilities (e.g., fiber-optic cable) is mostly sunk: it can be recouped only by providing local service. Competitors' willingness to sink enormous sums of precious investment dollars to construct facilities is an unmistakable expression of confidence in their ability to compete in the future. As the Justice Department has observed, the fact that competitors have "commit[ted] significant *irreversible* investments to the market (sunk costs) signals their perception that the requisite cooperation from incumbents has been secured or that any future difficulties are manageable." Schwartz Aff. ¶ 174 (emphasis added). Even in the unlikely event that competitors making the initial investments withdraw from the market, once facilities are in the ground, they remain available for use by other competitors. See Taylor Decl. ¶ 45.

The presence of competing facilities not only disciplines Bell Atlantic's behavior in the *retail* business, but also creates an enormous incentive to provide superior *wholesale* service. Bell Atlantic, too, operates a large, sunk-cost network. To recoup its investment, Bell Atlantic must generate revenue from traffic flowing over that network. If Bell Atlantic provides poor wholesale service to CLECs, they will move traffic that otherwise would have traveled over Bell Atlantic's network — either through resale or unbundled network elements — onto competing facilities. See Schwartz Aff. ¶ 77. This is precisely what the Justice Department's economic expert meant when he explained that "facilities-based entry options . . . can discipline an incumbent's behavior in more segments, not only on the retailing side but also in certain *network* functions." Id. ¶ 177 (emphasis added).

In New York, competitors have made sunk investments on a massive scale. According to a recent survey, there were 49 competitors in New York with facilities of some kind as of year-

end 1998, more than in any other State. See Taylor Decl. Att. A ¶ 6 & n.15. Even by conservative estimates, local competitors in New York have deployed nearly 6,000 route-miles of fiber and have deployed at least 47 local voice switches. See id. Att. A ¶ 9. By an equally conservative estimate, competitors have invested more than \$1 billion dollars in their own facilities. See id.

The unusual extent of facilities-based investment is highlighted by the scale on which competitors interconnect their facilities with Bell Atlantic's. As of July 1999, 46 competitors had established 776 collocation arrangements in central offices, and they now have access to 85 percent of Bell Atlantic's access lines. See id. Att. A. ¶ 21, Table 2. As of that same date, Bell Atlantic was providing 349,000 interconnection trunks to CLECs who used these trunks to exchange an average of about 2.5 billion minutes per month with Bell Atlantic. See id. Att. A ¶¶ 23, 29.

*Third, the fact that competition in New York comes in all shapes and sizes provides still further indication of the openness of the local market.* New York has attracted competition from both the biggest CLECs in the country (e.g., AT&T and MCI WorldCom) and from many smaller ones (e.g., Metropolitan Telecommunications and Marathon Metro). See id. Att. A ¶ 1(i). Cable operators (e.g., Time Warner, Cablevision, and Adelphia) are also providing local service, as are fixed wireless providers (e.g., Teligent, WinStar, NEXTLINK) and a wide variety of "pure" resellers. See id. Att. A ¶¶ 5, 14-16, 42-43, 60-62.

Competing carriers are serving both residential and business customers. See id. Att. A ¶ 1(ii). As of July 1999, New York CLECs already were serving almost a quarter of a million residential customers in the State. See id. Att. A, Table 3.

Entry is not limited to the New York City metropolitan area: competition in upstate New York is also robust. Twelve competing carriers have installed at least 15 switches and have deployed nearly 1,000 route-miles of fiber in upstate New York. See id. Att. A ¶ 17. At least three competing carriers have deployed both fiber and switches in Albany, Buffalo, and Syracuse. See id. Att. A. ¶¶ 18-20. As of July 1999, competing carriers were serving customers using some or all of their own facilities in each of the area codes in upstate New York. See id. Att. A, Table 4. They also were providing services through resale in each of those area codes. See id.

And competition is not limited to traditional wireline local exchange carriers. Additional competition in New York local markets comes from wireless and data providers. See id. Att. A ¶¶ 57-59. This Commission has authorized six PCS providers to offer service in every metropolitan area. See id. Att. A ¶ 57. AT&T, Sprint PCS, and Omnipoint have already built and activated PCS networks in the New York City metropolitan area and hold licenses to serve the entire State. See id. Although the Commission does not yet recognize wireless as a full economic substitute for wireline service, falling prices and improving quality are rapidly narrowing the gap. See id. Att. A ¶ 59.<sup>47</sup>

---

<sup>47</sup>See, e.g., Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order, 13 FCC Rcd 6245, ¶ 6 (1998); but see Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Third Report, 13 FCC Rcd 19746, 19817 (1998) (wireless providers are now “using aggressive pricing to position their services as true replacements for the wire- based services of LECs”); Cellular Telecommunications Industry Association’s Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability, 14 FCC Rcd 3092, ¶ 23 (1999) (“As wireless service rates continue their downward trend and the use of wireless service increases, there is a greater likelihood that customers will view their wireless phones as a potential substitute for their wireline phones.”).

Bell Atlantic also experiences significant and rapidly growing competition from carriers providing high-speed Internet access. Numerous competitors in New York provide this service in competition with Bell Atlantic: for example, Adelphia offers cable-modem service across Western New York, including the Buffalo area, see id. Att. A ¶ 64; Time Warner offers such service in Binghamton, Troy, Albany, Elmira, Corning, and Saratoga, see id. Att. A ¶ 63; and Covad, NorthPoint, Rhythms NetConnections, and Concentric have all deployed competitive DSL services throughout New York, see id. Att. A ¶ 66.

*Fourth, granting long distance relief will prompt still further local competition.* It is now commonly accepted that consumers demand one-stop shopping: they want a package containing at least local and long distance services. See, e.g., MacAvoy Decl. ¶ 14; Taylor Decl. ¶¶ 35-36. Once Bell Atlantic receives long distance approval, it will be able to provide that. See MacAvoy Decl. ¶¶ 10, 12; Taylor Decl. ¶ 38. To retain their customers, the long distance incumbents will have no choice but to do the same thing: they will have to enter local markets. See Taylor Decl. ¶ 39. And they will have to pursue not just the high-volume business customers (on which they have focused their efforts until recently) but also residential customers. See id.

This process has already started in New York. See id. ¶ 40. Long distance incumbents have expressly recognized that it is only a matter of time before Bell Atlantic receives authorization and that they must therefore enter local markets as soon as possible.<sup>48</sup> As an AT&T spokesperson candidly admitted in a press statement: "We want to enter the local phone market as soon as we can . . . . We know that Bell Atlantic will eventually pass the tests, it's just

---

<sup>48</sup>This is precisely what many of the long distance carriers did in Connecticut once SNET entered the long distance market. Long distance competition also increased as a result of SNET's entry, and Connecticut customers now benefit from lower long distance rates than customers in New York. See Taylor Decl. ¶ 34.

a matter of waiting for that to happen.”<sup>49</sup> MCI WorldCom is already beyond the talking stage: it has signed up more than 160,000 mostly residential customers for local service since the beginning of this year. See id. ¶ 40. Once Bell Atlantic’s entry is an actual fact, this process can only be expected to accelerate. See id.

**B. Local Markets in New York Will Remain Open After Bell Atlantic Obtains Section 271 Approval.**

There is no danger that, after Bell Atlantic gains section 271 approval, it will somehow close New York local markets and stifle competition. As already explained, most competitive entry in New York has been facilities-based. Consequently, Bell Atlantic simply lacks the ability to stifle competition; competitive networks will remain regardless of Bell Atlantic’s conduct. See supra, p.57. And to the extent competitive entry has taken the form of resale or unbundling, Bell Atlantic has a strong incentive to provide superior wholesale service; if it does not, it will lose business to competing network facilities and thereby lose revenue that will help recover its own sunk investment. See id.

---

<sup>49</sup>D. Johnson, AT&T Makes Plans to Enter Local Phone Service in New York via Bell Atlantic, Assoc. Press, Apr. 21, 1999 (quoting AT&T spokesman Gary Morganstern); see also P. Elstrom, AT&T's Wireless Path to Local Service, Bus. Week, Dec. 28, 1998, at 53 (“AT&T executives are seriously considering launching the commercial trial [of AT&T's fixed wireless approach, Project Angel] in New York . . . . The reason is strategic: Bell Atlantic is likely to get approval in 1999 to provide long distance service to New York residents.”).

Quite apart from these inescapable market realities, there is simply no risk that Bell Atlantic could close the market or block further entry. For one thing, Bell Atlantic's compliance has been, and will continue to be, scrutinized by one of the most aggressively pro-competitive state commissions in the country — the New York PSC. For another thing, Bell Atlantic is subject to extensive performance-reporting requirements and to comprehensive performance-assurance mechanisms that put no less than \$269 million annually at risk through self-executing remedies.

**1. The Regulatory Framework in New York Strongly Favors Competition.**

Both before and after passage of the 1996 Act, the New York PSC aggressively promoted local competition. The process of opening New York's local markets began as long ago as 1982, when the PSC ordered Bell Atlantic to remove from its tariffs virtually all restrictions on resale. See Taylor Decl. Att. A ¶ 41. The PSC first permitted competitors to begin using their own facilities to provide local service in 1985 and, in 1991, became the first state commission to permit competing carriers to provide switched local service. See id. Att. A ¶ 6 n.16. New York was the first State to mandate collocation and unbundling. See id. Att. A ¶ 30. As early as 1993, the PSC required Bell Atlantic to furnish CLECs with NXX codes and to pay reciprocal compensation. See id. Att. A ¶ 25 & n.59.

In 1995, this Commission recognized that the New York PSC had “create[d] an environment that is open to competitive entry in exchange and access services in the New York City metropolitan area.”<sup>50</sup> Congress used some of the PSC's regulatory initiatives as a blueprint

---

<sup>50</sup>NYNEX Telephone Cos. Petition for Waiver; Transition Plan to Preserve Universal Service in a Competitive Environment, Memorandum Opinion and Order, 10 FCC Rcd 7445, ¶ 2 (1995).

for the 1996 Act's core competition-enhancing requirements.<sup>51</sup> Wall Street analysts have widely hailed the PSC's pioneering efforts in opening local markets.<sup>52</sup> Indeed, even competing carriers (not usually shy to express discontent) have applauded the PSC for "leading the nation in developing new and creative regulatory policies that encourage competitive telecommunications service."<sup>53</sup>

Since enactment of the 1996 Act, the New York PSC has conducted exhaustive proceedings to evaluate Bell Atlantic's compliance with the competitive checklist.<sup>54</sup> In July 1996 (just months after passage of the 1996 Act), the PSC first began scrutinizing Bell Atlantic's

---

<sup>51</sup>See S. Rep. No. 23, 104th Cong., 1st Sess. (1995) ("The bill . . . requires telecommunications carriers with market power over telephone exchange or exchange access service to open and unbundle network features and functions to allow any customer or carrier to interconnect with the carrier's facilities. Several States (such as New York, California, and Illinois) have taken steps to open the local networks of telephone companies."); Case 94-C-0095, Opinion No. 96-13, PSC, Opinion and Order Adopting Regulatory Framework at 2 n.2, May 22, 1996 ("[t]he federal law reflects to a large extent New York policies").

<sup>52</sup>See, e.g., K. M. Leon, et al., Lehman Brothers, Inc., Ind. Rpt. No. 1660743, Telecommunications Services at 38 (Nov. 9, 1995) ("NYNEX has one of the most pro-competitive regulatory environments in the country. The New York PSC has pushed for collocation, co-carrier status, intraLATA toll competition and other ways to open the market. As a result NYNEX [wa]s the first carrier to sign co-carrier agreements with MFS, Cablevision, ACC Corp., and Teleport.").

<sup>53</sup>MFS News Release, MFS Subsidiary Granted Co-Carrier Status by New York Public Service Commission, Oct. 12, 1993, at 1-3 (quoting Royce Holland, President of MFS); see id. (quoting another MFS executive as saying that "New York has provided a road map for other states to follow in opening up their telecommunications markets to greater competition"); Testimony of Michelle Billand on Behalf of MCI WorldCom at 304, Docket Nos. P-00991648 & P-00991649 (Pa. PUC Jun. 22, 1999) ("There are bumps in the road, but there's a tough active Commission [in New York] that continues to put pressure on Bell Atlantic to do the things to get rid of those bumps and continue opening the local market.").

<sup>54</sup>Throughout the course of these proceedings, Bell Atlantic has continued to work with all interested parties (including the New York PSC, the Department of Justice, and competing carriers) in the context of the formal proceedings, the informal collaboratives, and individual discussions to attempt to resolve disputed issues. See Revised Procedures for Bell Operating Company Applications under Section 271 of the Communications Act, Public Notice, 12 FCC Rcd 18590, 18593 (1997).

compliance with the competitive checklist. See App. B, Tab 1. In February 1997, it opened a docket specifically devoted to that purpose: Case 97-C-0271. See App. C, Tab 5. Since that time, it has intensively analyzed every aspect of Bell Atlantic's checklist compliance down to the minutest detail, all with constant input from competing carriers — both through formal filings and hearings and through informal “collaborative” sessions. The formal record in Case 97-C-0271, the entirety of which accompanies this application (see App. C), has seen almost 1,000 submissions totaling more than 50,000 pages from 55 parties. There have been 19 days of technical conferences and hearings, at which testimony was heard from more than 100 witnesses, filling almost 4,500 pages of transcript.

By mid-1997, Bell Atlantic believed that it had satisfied the checklist. But the New York PSC, along with the Department of Justice, thought more needed to be done. To address their concerns, Bell Atlantic in April 1998 submitted its ground-breaking “Pre-Filing Statement,” in which it agreed to take a number of market-opening steps that went well beyond what was legally required. See Pre-Filing Statement (App. C, Tab 403). Four steps in particular deserve mention. First, Bell Atlantic agreed to subject its wholesale processes to extensive third-party testing. See id. at 33-34. Second, Bell Atlantic agreed to furnish the full “UNE platform,” even though the Eighth Circuit had struck down the FCC rule requiring Bell Atlantic to do so. See id. at 8-11. Third, Bell Atlantic agreed to improve its OSS so as to increase the percentage of orders that can “flow through” automatically, without human intervention. See id. at 28-32. Finally, Bell Atlantic agreed to a comprehensive system of self-executing remedies to ensure its continued provision of high-quality service to competing carriers. See id. at 34-42.

In return, both the New York PSC and the Department of Justice agreed that, once the steps set out in the Pre-Filing Statement were implemented, they would support Bell Atlantic's

section 271 application.<sup>55</sup> Even CLECs agreed that this outcome would be appropriate.<sup>56</sup> In the year and a half since Bell Atlantic submitted its Pre-Filing Statement, it has worked intensively with the New York PSC, the Department of Justice, KPMG (the third-party tester), and competing carriers to implement the Statement's steps. The PSC's exhaustive review has ensured that Bell Atlantic has not cut corners on any of them.

The New York PSC's market-opening efforts have hardly been limited to its section 271 docket: its proceedings to establish prices for interconnection, unbundled network elements, and resold services have been equally extensive. The PSC conducted its proceedings in four separate parts: one proceeding to set wholesale discounts for resold service,<sup>57</sup> and three "phases" addressing network-element-related issues: (1) rates for unbundled loops, switching, interoffice

---

<sup>55</sup>See New York Public Service Commission News Release, PSC Chairman Supports Conditions for Bell Atlantic's Entry into Long Distance and Irreversible Opening of the Local Telephone Market, Apr. 6, 1998 ("[I]f Bell Atlantic New York meets all of the steps outlined in its pre-filing . . . the local telecommunications market in New York will be fully and irreversibly opened to competition and I would recommend that Bell Atlantic then be permitted to enter into the long distance market.") (App. C, Tab 403); Letter from Joel I. Klein, U.S. Department of Justice, to John O'Mara, Chairman, New York Public Service Commission, at 1, 2 (Apr. 6, 1998) ("[T]he Department of Justice has announced that it will support applications under Section 271 based on a showing that the local telecommunications markets in a state are fully and irreversibly open to competition. . . . [I]t is our view that the Pre-Filing Statement filed by Bell Atlantic-New York, if fully and properly implemented, should support a conclusion that the New York local telephone market is 'fully and irreversibly open to competition.'").

<sup>56</sup>See Pledging Allegiance to Telco Competition: Royce Holland, MFS's Former Chief, in the Telecom Game Again, Network World, Dec. 7, 1998 (quoting Allegiance CEO Royce Holland: "If Bell Atlantic does everything it is promising the New York Public Service Commission it will do, then I expect Bell Atlantic will get approved by the first quarter [of 1999] to get into long distance.").

<sup>57</sup>See Cases 95-C-0657, 94-C-0095 & 91-C-1174, Opinion No. 96-30, PSC, Opinion and Order Determining Wholesale Discount, Nov. 27, 1996 (App. G, Tab 7) ("PSC Wholesale Discount Order"), rehearing denied, Cases 95-C-0657, 94-C-0095 & 91-C-1174, PSC, Order Denying Petition for Rehearing, Feb. 18, 1997 (App. G, Tab 8).

transport, and signaling;<sup>58</sup> (2) rates for other network elements;<sup>59</sup> and (3) remaining issues not already addressed (including collocation rates and further deaveraging of loop rates).<sup>60</sup> These proceedings, which have resulted in a full suite of TELRIC rates,<sup>61</sup> spanned more than three years, produced thousands of pages of transcript, and involved lengthy hearings that permitted competing carriers to make detailed submissions and present expert testimony. See, e.g., PSC UNE Rate Order (App. G, Tab 9), at 5.

The outcome of those proceedings was fully consistent with this Commission's pricing rules, including the TELRIC methodology. Indeed, the New York PSC was never even put to the task of considering whether it should reject TELRIC: all parties before it (including Bell Atlantic) contemplated that rates for unbundled network elements would conform to that

---

<sup>58</sup>See Cases 95-C-0657, 94-C-0095 & 91-C-1174, Opinion No. 97-2, PSC, Opinion and Order Setting Rates for First Group of Network Elements, Apr. 1, 1997 (App. G, Tab 9) ("PSC UNE Rate Order"), rehearing denied, Cases 95-C-0657, 94-C-0095 & 91-C-1174, Opinion No. 97-14, PSC, Opinion and Order Concerning Petitions for Rehearing of Opinion No. 97-2, Sept. 22, 1997 (App. G, Tab 12).

<sup>59</sup>See Cases 95-C-0657, 94-C-0095 & 91-C-1174, Opinion No. 97-19, PSC, Opinion and Order in Phase 2, Dec. 22, 1997 (App. G, Tab 13), rehearing denied in part and granted in part, Cases 95-C-0657, 94-C-0095 & 91-C-1174, Opinion No. 98-13, PSC, Opinion and Order Granting in Part Petitions for Rehearing, June 8, 1998 (App. G, Tab 15).

<sup>60</sup>See Cases 95-C-0657, 94-C-0095, 91-C-1174 & 96-C-0036, Opinion No. 99-4, PSC, Phase 3 Opinion and Order, Feb. 22, 1999 (App. G, Tab 19), rehearing denied in part and granted in part, Cases 95-C-0657, 94-C-0095, 91-C-1174 & 96-C-0036, Opinion No. 99-9, PSC, Opinion and Order Granting in Part and Denying in Part Phase 3 Petitions for Rehearing, July 26, 1999 (App. G, Tab 24).

<sup>61</sup>Although the New York PSC has now issued final orders and rehearing orders in each of the four pricing-related proceedings described in the text, it opened a new docket, Case 98-C-1357, on September 30, 1998, "to examine, beginning in January 1999, the need for any changes in the rates set in these proceedings for unbundled network elements." Case 98-C-1357, PSC, Order Denying Motion to Reopen Phase 1 and Instituting New Proceeding at 12, Sept. 30, 1998 (App. G, Tab 18). A final decision in that proceeding has not yet issued.

methodology. As the PSC put it: “The case was litigated on a TELRIC basis; all parties contemplate its being decided on that basis; [and] TELRIC is certainly a reasonable approach to use.”<sup>62</sup> Likewise, the PSC set wholesale discounts that fully comply with this Commission’s rules. See PSC Wholesale Discount Order (App. G, Tab 7), at 35. Hewing closely to the account-by-account avoided-cost analysis of this Commission’s Rule 609, the PSC set a discount of 19.1 percent for service that includes operator services and 21.7 percent for service that excludes operator services. See id. at 79. As required by the PSC, Bell Atlantic has since filed tariff amendments reflecting the PSC’s pricing determinations. See App. H, Tab 2.

**2. Bell Atlantic Is Subject to Comprehensive Performance Reporting and Assurance Mechanisms.**

Bell Atlantic is subject to extensive reporting requirements that allow the New York PSC and competitors alike to monitor closely Bell Atlantic’s performance, thereby enabling them to identify potential problems even before they pose a threat to competition. In the Carrier-to-Carrier proceeding, the PSC supervised a two-year collaborative process in which competitive local carriers, consumer groups, and state agencies (with input from the Department of Justice) worked with Bell Atlantic to formulate reporting requirements and standards. See generally Dowell/Canny Decl. ¶¶ 10-13. The PSC has now approved those reporting requirements and standards on a permanent basis.<sup>63</sup> In the words of the PSC, these reporting requirements and

---

<sup>62</sup>PSC UNE Rate Order at 15; see also id. at 13 (“Notwithstanding the court’s staying of the FCC’s pricing rules, the parties continued to rely on the TELRIC standard.”).

<sup>63</sup>See Case 97-C-0139, PSC, Order Adopting Inter-Carrier Service Quality Guidelines, Feb. 16, 1999 (App. E, Tab 61); Case 97-C-0139, PSC, Order Establishing Permanent Rule, June 30, 1999 (App. E, Tab 83); see generally Dowell/Canny Decl. ¶¶ 12-13.

standards “are comprehensive and will help fulfill our goal of achieving expeditiously an open, competitive local exchange market.”<sup>64</sup>

Among other things, the New York PSC has established standards for pre-ordering, ordering, provisioning, maintenance and repair, network performance, billing, and operator services. See id. ¶ 18. For functions that have retail analogues, the PSC has established a parity standard; Bell Atlantic must provide competing carriers with the same level of service that it provides to its own retail operations. See id. ¶¶ 9, 112. For functions without retail analogues, the PSC has established absolute standards. See Dowell/Canny Decl. ¶¶ 9, 159. In most such cases, the PSC has adopted a stringent “95 percent” standard. See id. ¶ 47. There are now measures in 150 separate areas, with more than 400 separate measures on the monthly aggregate report alone and more than 1,000 overall. See Dowell/Canny Decl. ¶¶ 122-152 & Att. C.

In addition to the performance standards and reporting requirements, Bell Atlantic also will be subject to comprehensive performance assurance plans — complete with self-executing remedies — once it receives long distance authorization. Bell Atlantic initially agreed in its April 1998 Pre-Filing Statement to be subject to automatic bill-credit mechanisms. See Pre-Filing Statement at 35; Dowell/Canny Decl. ¶ 15. Following further negotiations with the PSC Staff (and with extensive input from competing carriers), see Dowell/Canny Decl. ¶¶ 118-119,

---

<sup>64</sup> App. E, Tab 83, at 3. The standards and reporting obligations adopted in the course of the Carrier-to-Carrier proceeding include measures and levels of detail above and beyond the ones to which Bell Atlantic agreed in the course of this Commission's review of the Bell Atlantic-NYNEX merger. See Dowell/Canny Decl. ¶ 14. There, Bell Atlantic committed itself to provide performance-monitoring reports in all States within its region (not just New York). See Applications of NYNEX Corp. and Bell Atlantic Corp. for Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, Memorandum Opinion and Order, 12 FCC Rcd 19985, ¶ 182 (1997). Pursuant to this requirement, Bell Atlantic provides CLECs every quarter with performance-monitoring reports that include monthly detail. See id. at 20107, App. C ¶ 1d, App. D; id. at 20113, App. D.

Bell Atlantic in July of this year committed to two separate and mutually reinforcing plans designed to ensure that Bell Atlantic will provide absolutely superior performance to CLECs, see id. ¶¶ 16, 118; see also Petition for Approval of the Performance Assurance Plan and Change Control Assurance Plan for Bell Atlantic-New York, Case 97-C-0271 (PSC filed July 15, 1999) (App. C, Tab 838). And Bell Atlantic recently submitted amendments that strengthen the plans still further. See Dowell/Canny Decl. ¶ 16. These amendments bring Bell Atlantic's total exposure under the plans to no less than \$269 million annually. See id. ¶¶ 124, 125.

The first of these plans is the Amended Performance Assurance Plan, which is designed to ensure superior wholesale performance quality. The plan enforces compliance with a subset of the Carrier-to-Carrier measures that the New York PSC deemed most important to competitors. See id. ¶ 118. It has two parts. The first part, which looks to performance in the broader market, is designed to evaluate performance relating to four "Mode of Entry" categories: resale, unbundled network elements, interconnection, and collocation. See id. ¶ 127. This part puts \$75 million in bill credits at risk, subject to doubling if performance falls below a specified threshold. See id. ¶ 123. Bill credits are distributed to competing carriers that use the particular mode of entry category in proportion to the volume of service that a competitor uses in comparison to other competitors — whether or not the particular competitor itself actually received sub-standard performance. See id. ¶¶ 126, 137.

A second part of the Plan puts an additional \$75 million in bill credits at risk. See id. ¶ 123. This part focuses on 11 performance measurements (a subset of the 100-plus Mode of Entry measurements) that the New York PSC deemed especially critical. See id. ¶¶ 139-141. Whereas bill credits under the "Mode of Entry" part of the Plan do not kick in unless Bell Atlantic's score for an entire category is below par, see id. ¶ 131, bill credits under this "Critical

Measures” part attach if Bell Atlantic’s score for even a single measure falls below the established threshold — even if overall performance is outstanding, see id. ¶ 142. Where Bell Atlantic misses a critical measure, all competing carriers that received sub-standard performance during the month will receive a bill credit. See id. ¶ 142.

A separate plan, which is known as the Amended Change Control Assurance Plan and which to our knowledge has no equal anywhere in the industry, is designed to ensure that changes in Bell Atlantic’s OSS software (which inevitably must be made from time to time) are implemented smoothly, without disrupting CLECs’ operations. See id. ¶¶ 16, 153. This plan puts an additional \$10 million annually at risk (and allows the New York PSC to direct an additional \$15 million from the unused portion of the money available under the Amended Performance Assurance Plan). See id. ¶¶ 153, 155. The plan uses four measurements (each taken from the PSC’s Carrier-to-Carrier measures), including whether Bell Atlantic sends competitors notice of impending software changes in a timely manner. See id. ¶ 154.

The amendments to these Plans that Bell Atlantic recently submitted to the New York PSC provide still greater incentives to deliver the best possible quality service to CLECs. The amendments were designed specifically to address concerns raised by the PSC, the Department of Justice, and this Commission’s staff. See Dowell/Canny Decl. ¶ 16. For example, the amendments incorporate a number of changes proposed by the PSC in the rulemaking notice it issued formally to adopt the plans. See id. ¶ 120. In addition, they provide the PSC with complete flexibility to allocate money within the plans to put more bill credits at risk for particular modes of entry or critical measures if the need arises. See id. ¶¶ 120, 124. They put an additional \$34 million in new money at risk to ensure superior performance in specific key areas including flow through, hot cuts, and certain unbundled-element ordering measures. See

id. ¶ 124. And they propose to add specific hot-cut and DSL-related measures to the Critical Measures category to provide still further incentives to deliver superior service in these two areas (and to make up to \$24 million of unused money from other parts of the Plan available in bill credits if these particular measures are not met). See id.

In addition to the performance assurance plans outlined above, Bell Atlantic is also subject to self-executing remedies under more than a dozen interconnection agreements. See id. ¶¶ 8, 14, 125. Amounts placed at risk by these agreements come on top of the amounts placed at risk by the plans. See id. ¶ 125.

If, despite all the safeguards and measures described above, Bell Atlantic were nevertheless to engage in anticompetitive conduct, carriers would of course be able to resort to private remedies under generally applicable statutes, including the treble-damages remedy of the federal antitrust laws. But things will never come that far. Any anticompetitive conduct is unthinkable in light of this Commission's powers under section 271(d)(6)(A). That provision allows the Commission to enforce the requirements of section 271 with penalties, up to and including possible revocation of long distance authority. Moreover, Bell Atlantic still requires section 271 authorization with respect to 13 separate States (including the District of Columbia) in its region; it is implausible that it would do anything in New York that might jeopardize authorization in other States.

**C. Permitting Bell Atlantic To Provide InterLATA Service in New York Will Vastly Enhance Consumer Welfare.**

There can be little doubt that Bell Atlantic's entry into New York long distance markets will vastly enhance consumer welfare. Despite recent fanfare about new pricing plans, the simple reality is that long distance competition still leaves much to be desired — particularly for the vast majority of residential customers, whose rates would actually increase under those new plans. Adding a strong competitor like Bell Atlantic to the tightly oligopolistic long distance industry necessarily will produce enormous consumer-welfare gains. Indeed, eminent economist Professor Paul MacAvoy estimates that Bell Atlantic's entry would increase consumer welfare in New York by more than \$1 billion annually. See MacAvoy Decl. ¶ 8.

**1. Long Distance Competition Is Currently Inadequate.**

Although the performance of the long distance industry has obviously improved since divestiture in 1984, it is clear that, as the Department of Justice has recognized, “[i]nterLATA markets remain highly concentrated and imperfectly competitive.”<sup>65</sup> Indeed, deconcentration has halted in the past few years. See MacAvoy Decl. Table 9.<sup>66</sup> To the extent competition has improved, the benefits have mostly been limited to large businesses with high volumes of long distance calls. See Taylor Decl. ¶ 18. Residential customers, in contrast, have suffered with continual price increases. See id. ¶¶ 10-18. For example, AT&T's basic residential rates

---

<sup>65</sup>DOJ Oklahoma Evaluation at 3-4.

<sup>66</sup>The long distance industry has become more concentrated in recent years, with the merger of MCI and WorldCom and Qwest and LCI. See MacAvoy Decl. ¶ 67. And MCI WorldCom reportedly is in talks to acquire Sprint, which, if completed, would give just two companies (AT&T and MCI WorldCom/Sprint) control over more than 80 percent of the long distance market. See R. Blumenstein & S. Lipin, MCI WorldCom, Sprint Ponder Merger, Wall St. J., Sept. 24, 1999, at A3; J. Wilke & K. Chen, MCI, Sprint Could Pass Antitrust Test, Wall St. J., Sept. 27, 1999, at A3.

increased by more than 200 percent between 1991 and July 1999. See id. ¶ 10. Even discount rates increased by more than 35 percent in that period. See id. ¶ 16.

Low-volume residential customers in particular “are being left behind.” Low-Volume Long-Distance Users, Notice of Inquiry, CC Docket No. 99-249, FCC 99-168 (rel. July 20, 1999) (separate statement of Commissioner Ness at 1). Such customers commonly do not sign up for discount plans, which are unrewarding at low volumes, and are hit hardest by the incumbents’ minimum-usage requirements and other fixed fees. See Taylor Decl. ¶¶ 13, 26; MacAvoy Decl. ¶ 112. This Commission has repeatedly expressed concern on just this topic. See, e.g., Michigan Order ¶ 16 (“we remain concerned about the relative lack of competition among carriers to serve low volume long distance customers”). Indeed, the Commission’s concern recently culminated in a Notice of Inquiry devoted entirely to this issue. See Low-Volume Long-Distance Users, Notice of Inquiry.

The Commission has also repeatedly recognized that Bell company entry holds out “the best solution” to deficiencies in long distance competition. Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, 11 FCC Rcd 20730, ¶¶ 119, 125 (1996). Bell company entry into long distance “has the potential to increase price competition and lead to innovative new services and marketing efficiencies.” Michigan Order ¶ 388 (internal quotation marks omitted); see DOJ Oklahoma Evaluation at 4 (“additional entry [into long distance markets], particularly by firms with the competitive assets of the BOCs, is likely to provide additional competitive benefits”). Recently, the Commission singled out Bell company entry as a possible solution to the plight of low-volume consumers. See Low-Volume Long-Distance Users, Notice of Inquiry ¶ 17 (asking

“whether the entry of Bell Operating Companies (BOCs) into the long-distance market will mitigate the problems currently experienced by low-volume long distance users”).

Concerns about long distance competition are fully justified. Long distance carriers have engaged in lock-step pricing. See MacAvoy Decl. ¶ 23; Taylor Decl. ¶ 6. As this Commission has recognized, “each time AT&T has increased its basic rate, MCI and Sprint have quickly thereafter matched the increase.”<sup>67</sup> Indeed, the Commission has expressed concern that this pricing pattern may be the result of “tacit price coordination among AT&T, MCI and Sprint.” Id. ¶ 82. Whether or not tacit price coordination is in fact taking place, it is clear that pricing patterns of this kind would not occur in a fully competitive market. See Taylor Decl. ¶¶ 8-9.

In recent months, the long distance incumbents have announced with much fanfare one new discount plan after another. See id. ¶ 24; MacAvoy Decl. ¶ 113. Long distance carriers would no doubt like the Commission to believe that the new plans signal that the long distance market is sufficiently competitive, so that there is not much to be gained by Bell entry. But, taking account of restrictions and hidden monthly charges, there is far less to these new price plans than at first meets the eye. See Taylor Decl. ¶¶ 26-29. Indeed, for the vast majority of residential customers (and low-volume users in particular), they are of no benefit at all. See MacAvoy Decl. ¶¶ 113-119; Taylor Decl. ¶ 26. And only about one percent of residential customers currently pay a rate as low as what AT&T’s average rates would have been if only it had passed through the reduction in access charges and other fees from which it profited between 1991 and the present. See Taylor Decl. ¶ 28. To the extent the plans provide a benefit for some

---

<sup>67</sup>Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271, ¶ 81 (1995) (“AT&T Non-Dominance Order”).

customers, they merely provide a small taste of things to come. Analysts have explained that the new plans are an initial pre-emptive response to looming Bell entry. See id. ¶ 29.

The continuing upward movement in long distance rates is particularly surprising because carriers' costs have fallen precipitously. See MacAvoy Decl., Figs. 5-8. Between 1991 and July 1999, access charges — long distance carriers' most important cost component — decreased by 30 percent. See Taylor Decl. ¶ 19; see also MacAvoy Decl. ¶ 88. In a competitive market, falling costs would of course result in falling prices; the fact that this has not happened in the long distance market compels the conclusion that competition currently is decidedly imperfect. See Taylor Decl. ¶¶ 22-23.

The combination of rising prices and declining costs has caused margins (or, more precisely, price-cost margins)<sup>68</sup> to skyrocket. Between 1990 and 1998, the price-cost margin for basic long distance service almost doubled, from around 0.40 to almost 0.80. See MacAvoy Decl., Fig. 9. Even for discount-plan long distance service (for which price increases have been smaller), price-cost margins surged from just around 0.40 to over 0.60. See id., Fig. 10. Moreover, long distance carriers' margins have not just grown; they have converged to the point that they are nearly identical. See id. ¶¶ 93, 97. Again, none of this would happen in a competitive market. See id. ¶¶ 85, 87, 95, 98.

## **2. Bell Atlantic's Entry Will Increase Long Distance Competition.**

As both this Commission and the Department of Justice have recognized, Bell company entry would improve long distance competition. See supra, pp. 73-74. Indeed, the economic

---

<sup>68</sup>Price-cost margin is an often-used indicator of an industry's competitiveness. See MacAvoy Decl. Exec. Summ. ¶ 3. Price-cost margin equals margin (price minus marginal cost) divided by price. See id. For example, if it costs 60 cents to generate a dollar of revenue, the price-cost margin equals 0.40.

literature is clear that the addition of even a single competitor to a three-firm environment will produce significant competitive benefits. See MacAvoy Decl. ¶¶ 19-21; see also Policy and Rules Concerning the Interstate, Interexchange Marketplace, Notice of Proposed Rulemaking, 11 FCC Rcd 7141, ¶ 81 (1996) (“Increasing the number of facilities-based carriers should make tacit price coordination more difficult.”). As the Commission itself has emphasized, entry by a Bell company could prove particularly valuable: whereas the long distance incumbents have been able to ignore price cutting by small resellers, they will not be able to ignore Bell Atlantic. See Taylor Decl. ¶¶ 31-32. In fact, AT&T already has begun quietly test marketing a new package of services (local and long distance) that provides lower prices than currently are generally available. See MacAvoy Decl. ¶ 46.

Bell Atlantic is well positioned to be an important long distance competitor, particularly with respect to residential and low-volume users. For example, Bell Atlantic already possesses a strong brand name and a solid reputation as a provider of telephone service. See id. ¶ 11; Taylor Decl. ¶¶ 31-32. And Bell Atlantic already provides services extensively to the mass market. Professor MacAvoy estimates that Bell Atlantic’s entry could produce consumer welfare gains in New York of as much as \$1.1 billion annually, for a present value of \$7.2 billion. See MacAvoy Decl. ¶¶ 8, 50, 59, Tables 1, 4, 8.

These predictions are buttressed by tangible evidence from other instances in which incumbent local exchange carriers have been permitted to provide long distance service. Perhaps the best example is that of Southern New England Telephone (“SNET”), which — not being a BOC — has been allowed to provide a bundle of local and long distance services. Since it began offering long distance service in 1994, SNET’s long distance service has been particularly appealing to low-volume residential customers. See Taylor Decl. ¶ 34 & Att. C ¶ 3. SNET’s

long distance rates are on average 36 percent lower than AT&T's rates in New York, which has forced AT&T to respond in kind. See id. ¶ 34 & Att. C ¶ 2. And SNET has offered its products in an innovative way, pioneering long distance service sold by the second (i.e., without rounding up to the next minute). See id. Att. C ¶ 4.

Indeed, Bell Atlantic itself has already proved its value as a long distance competitor. Ever since divestiture, Bell Atlantic has been permitted to offer long distance service in two "corridors" connecting New Jersey to New York City and Philadelphia. Bell Atlantic's rates in the corridors are as much as 26 percent lower than the incumbents'. See id. ¶ 33. Bell Atlantic's price cutting has proved so threatening to the incumbent long distance carriers that they have requested special permission to lower their rates in the corridors without lowering them elsewhere. See id.

### **3. Bell Atlantic's Entry Will in No Way Impair Long Distance Competition.**

The benefits Bell Atlantic's entry will bring to New York markets come without corresponding costs: Bell Atlantic could not impede long distance competition. The long distance incumbents presumably will raise the same tired arguments about supposed risks of access discrimination and cross-subsidization that they have advanced in previous attempts to prevent Bell companies from entering adjacent businesses. But actual market experience has proven them wrong on every prior occasion, and they are wrong here as well.

As an initial matter, Congress plainly determined that, once a Bell company meets the other requirements of section 271, generic and speculative claims about the supposed risks of access discrimination and cross-subsidization should not stand in the way of Bell company entry. And for good reason. The overwhelming historical evidence since divestiture shows that these risks have not materialized where Bell companies have been allowed into adjacent markets. On

the contrary, in each instance, output has increased, prices have fallen, and competition has thrived.

For example, Bell companies have been permitted to compete in wireless markets since 1983. Since that time, subscribership has soared,<sup>69</sup> there has been rapid entry by multiple competitors,<sup>70</sup> and prices have fallen dramatically.<sup>71</sup> See id. ¶ 55. No Bell company has achieved dominance; instead, “the market shares in each cellular service area have been divided on a roughly equal basis between wireline and nonwireline carriers.”<sup>72</sup>

Developments in information-services markets have been similar. For example, although Bell companies have been providing Internet access service for years, no Bell company has come anywhere near obtaining market power.<sup>73</sup> Today, there are more than 5,000 Internet Service

---

<sup>69</sup>Subscribership grew from zero in 1983 to nearly 70 million as of December 1998. See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Fourth Report, FCC 99-136, at 6 (rel. June 24, 1999) (“Fourth CMRS Report”).

<sup>70</sup>According to this Commission, there are at least five providers in each of the 35 largest Basic Trading Areas (“BTAs”) and at least three providers in 97 of the 100 largest BTAs. See id.

<sup>71</sup>According to one analyst, prices have fallen “as much as 25 to 40 percent over the last two years (depending on the market).” L.R. Mutschler, Merrill Lynch Capital Markets, Ind. Rpt. No. 2747793, Telecommunications Cellular: Wireless Trends in the US at 3 (Mar. 11, 1999). New “digital one rate” price plans have led to even more dramatic price declines. See Fourth CMRS Report at 11.

<sup>72</sup>Amendment of the Commission’s Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, Notice of Proposed Rulemaking, Order on Remand, and Waiver Order, 11 FCC Rcd 16639, ¶ 47 (1996).

<sup>73</sup>As even MCI WorldCom’s economists have noted, the incumbent LECs “are each minor ISP players.” Declaration of Kenneth C. Baseman and A. Daniel Kelley, attached to MCI Comments, Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corp., Transferor, to SBC Communications Inc., Transferee, CC Docket No. 98-141 (FCC filed Oct. 15, 1998).

Providers nationwide, the largest of which include AT&T, America Online, Microsoft, and Sprint.<sup>74</sup>

The Bell companies also have been providing voice mail for many years, and competition in this market has thrived as well. See id. ¶ 57. The voice-messaging industry has grown at double-digit rates; monthly service fees have dropped significantly; and no Bell company has ever achieved a considerable share of this market. See id. The market for customer premises equipment, which Bell companies have been permitted to enter since 1984, is likewise characterized by hundreds of competitors, steadily growing output, and declining prices. See id. ¶ 58.<sup>75</sup>

Quite apart from the fact that actual market experience refutes the speculative claims of the long distance incumbents, extensive safeguards put in place by Congress and the Commission render their arguments baseless. The incumbents' access-discrimination argument is apparently that, after long distance entry, Bell Atlantic will have an incentive and ability to discriminate against other long distance carriers in providing exchange access, either by selectively raising its prices or by impairing its quality. Even if such conduct were not plainly unlawful, see 47 U.S.C. § 272(c) and (e), it would be utterly implausible. Bell Atlantic could not raise rivals' access rates if it wanted to: both intrastate and interstate access charges are strictly

---

<sup>74</sup>Bill McCarthy, Introduction to the Directory of Internet Service Providers, Boardwatch, Summer 1999, <<http://boardwatch.internet.com/isp/summer99/introduction.html>>; Consumer Internet Service Providers Post Solid Subscriber Growth in 1998, Electronic Information Rep., Jan. 15, 1999.

<sup>75</sup>See, e.g., Statement of Reed E. Hundt, Chairman, FCC, Before the Committee on Commerce, Science, and Transportation, United States Senate on S. 1822, the "Communications Act of 1994" and "Telecommunications Equipment Research and Manufacturing Competition Act of 1994," 1994 FCC LEXIS 835 (Feb. 23, 1994) ("Today, the benefits of competition in the CPE market are tangible. . . . Since deregulation, prices for this equipment have fallen, and as prices declined, sales increased.").

regulated. Moreover, it is simply implausible that Bell Atlantic could impair quality sufficiently to benefit its own long distance operations, but not enough to enable the incumbents to detect wrongdoing. See Taylor Decl. ¶ 75.

The incumbents' cross-subsidization claim is equally meritless, as this Commission itself has concluded.<sup>76</sup> The claim apparently is that Bell Atlantic would be able to misallocate long distance costs to its local operations (where it would raise rates to captive ratepayers to pay for them), thereby enabling it to engage in predatory pricing in the long distance market while immediately recouping any losses. Again, even if such conduct were not illegal, it would be utterly unlikely to occur. First, both this Commission and the New York PSC use price (not rate-of-return) regulation to restrain Bell Atlantic's exchange-access and local-exchange rates, rendering cost-shifting futile. See id. ¶ 72. Second, the separate-subsidiary requirement of section 272(a)(2)(B) and this Commission's accounting standards provide more than adequate safeguards against cost shifting. See id. ¶¶ 73-74. Finally, there no longer is any place for Bell Atlantic to cross-subsidize from. Now that Bell Atlantic's local markets are open, and local competition is thriving, Bell Atlantic cannot as an economic matter subsidize losses in long distance by increasing its local rates. See id. ¶¶ 61-62. Doing so would prompt immediate competitive attacks, causing Bell Atlantic to lose the very local revenue that supposedly would make this cross-subsidization possible in the first place. See id.

---

<sup>76</sup>See Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, ¶¶ 103-108 (1997) ("BOC Non-Dominance Order"); see also United States v. Western Elec. Co., 993 F.2d 1572, 1580 (D.C. Cir. 1993).

Perhaps most fanciful is the price-squeeze argument that long distance carriers have advanced from time to time — and that this Commission has rejected repeatedly.<sup>77</sup> The argument combines the tenuous access-discrimination and cross-subsidization claims to predict that a Bell company might simultaneously increase its access charges and lower its long distance rates, leaving other long distance carriers unable to compete. But, without the ability to make captive ratepayers bankroll a predatory strategy (see supra, p.80), such a course of action is as implausible as any other predatory-pricing plan.<sup>78</sup> The strategy would cost money in the short run, and there would be no possibility of recouping in the long run: given massive sunk costs, the notion that any carrier (let alone an upstart) could eliminate rival long distance networks in New York is fanciful. See Taylor Decl. ¶¶ 64, 69; cf. United States v. Western Elec. Co., 993 F.2d 1572, 1581-82 (D.C. Cir.) (observing that competitive harm in information services was unlikely where incumbents included numerous substantial firms), cert. denied, 510 U.S. 984 (1993). In any event, the imputation requirement of section 272(e)(3) provides ample safeguards against such conduct. See Taylor Decl. ¶ 67.

---

<sup>77</sup>See, e.g., BOC Non-Dominance Order ¶ 129; Access Charge Reform, First Report and Order, 12 FCC Rcd 15982, ¶ 278 (1997); Applications of Pacific Telesis Group and SBC Communications, Inc., Memorandum Opinion and Order, 12 FCC Rcd 2624, ¶ 54 (1997).

<sup>78</sup>See, e.g., Brooke Group Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. 209, 226 (1993) (“predatory pricing schemes are rarely tried, and even more rarely successful”) (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 589 (1986)); see generally Taylor Decl. ¶¶ 68-70.

In sum, each of the shop-worn scenarios of anticompetitive conduct is simply chimerical. Indeed, where incumbent LECs have been permitted to compete in long distance markets (as in the cases of Bell Atlantic, GTE, SNET, Sprint, and Rochester Telephone), none of the incumbents' dire predictions has ever come to pass. See id. ¶¶ 33-34, 54. And the predictions have become only more tenuous since the passage of the 1996 Act: now that local markets are open to competition and extensive safeguards are firmly in place, there no longer is even a theoretical risk of harm from Bell Atlantic's entry into long distance — only benefits.

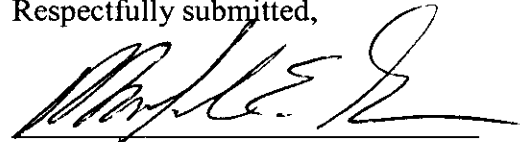
\* \* \*

In short, granting Bell Atlantic's application is in the public interest. The local market in New York is unquestionably open, and will remain so. Both local and long distance competition will increase when long distance companies are required to compete with Bell Atlantic in both parts of this converging telecommunications market.

## CONCLUSION

For the reasons set forth above, Bell Atlantic's application for authorization to provide in-region interLATA service in New York should be approved.

Respectfully submitted,



Michael E. Glover  
Leslie A. Vial  
Edward Shakin  
Bell Atlantic  
1320 North Court House Road  
Eighth Floor  
Arlington, Virginia 22201  
(703) 974-2944

Of Counsel:  
James R. Young  
Edward D. Young III

Mark L. Evans  
Henk Brands  
Evan T. Leo  
Kellogg, Huber, Hansen, Todd &  
Evans, P.L.L.C.  
1301 K Street, N.W.  
Suite 1000 West  
Washington, D.C. 20005  
(202) 326-7900

James G. Pachulski  
TechNet Law Group, P.C.  
2121 K Street, N.W.  
Suite 800  
Washington, D.C. 20037  
(202) 261-3595

Randal S. Milch  
Donald C. Rowe  
William D. Smith  
New York Telephone Company  
d/b/a Bell Atlantic – New York  
1095 Avenue of the Americas  
New York, New York 10036  
(212) 395-6405

September 29, 1999